Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-256

CHRISTINA FLAIM,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

CHRISTINA FLAIM, petitioner, petitions the Court for a writ of certiorari to the Court of Claims of the State of Illinois, to review a judgment of that Court filed June 11th, 1975, a timely motion to vacate which was denied May 15th, 1978, denying her claim for damages for personal injuries sustained by her as a result of respondent's Department of Corrections' action in approving the parole and release of a juvenial, who, after his release, attacked, battered, robbed, and attempted to murder her with a deadly weapon, the respondent knowing the said parolee to be a dangerous person.

The opinion of the Court of Claims is set out in Appendix 1, and is reported as 30 Court of Claims of the State of Illinois at pages 635-639.

JURISDICTION

The date of the judgment sought to be reviewed is June 11th, 1975, and of the order sought to be reviewed is May 15th, 1978.

The jurisdiction of this Court is invoked under Title 28, Section 1257(3) of the United States Code.

QUESTIONS PRESENTED FOR REVIEW

Whether the State of Illinois is, pursuant to the equal protection clause of the federal constitution, under a duty to compensate innocent victims of crime "without regard to whether the state was negligent or not."

Whether Section 84 of the "Crime Victims Compensation Act" effective October 1st, 1973, Illinois Revised Stututes 1977, Chapter 70, Section 71 et seq, violates the equal protection clause of that constitution in providing that: "This act applies only to injuries inflicted after

the effective date of this Act." October 1st, 1973, petitioner's injuries having been inflicted on December 11th, 1965, and her suit having been filed on December 10th, 1966.

ILLINOIS STATUTES

The opinion admits that petitioner could recover under the "Crime Victims Compensation Act" if she had been injured after October 1st, 1973 (Appendix, p 2, 30 Court of Claims 635 at 636). The only provision claimed to be unconstitutional is Section Section 84, reading: "This act applies only to injuries inflicted after the effective date of this Act." (Appendix, p 2, 30 Court of Claims 635 at 636.)

Illinois Revised Statutes 1977, Chapter 37, Section 439.7, provides:

> "The court /of Claims/ shall have jurisdiction to hear and determine * * *: A. All claims against the State of Illinois

> founded upon any law of the State of Illinois * * * D. All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois, in law or in chancery, if the State were suable * * *. The defense that the State * * * is not liable for the negligence of its officers, agents, and employees in the course of their employment shall not be applicable in the hearing and and determination of such claims. * * * (e) All claims pursuant to the Crimes Victims Compensation Act."

STATEMENT OF THE CASE

The first constitutional question was raised for the first time in the pleadings and for the second time in the brief for petitioner in the Court of Claims, where petitioner stated that the State of Illinois is under a federal constitutional duty to protect the petitioner under the equal protection clause of the Fourteenth Amendment, and required to compensate her for its failure to do so without regard to whether it

was negligent or not, and the decision of that Court on the point is reviewable by the Supreme Court of the United States, and that the law should so develop is shown by the legislation recently adopted in Great Britian and New Zealand that would have been applicable to the attack on December 11th, 1965, had it occured in those jurisdictions.

The complaint in this case was filed in 1966. Several things had changed since then. The Constitution of 1870 had been replaced by the Constitution of 1970, and this Court in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 1971, 403 U.S. 388, in which this Court held that a causeof action for damages against federal law enforcement officers who violate the fourth amendment could be inferred directly under the constitutional provisions.

That decision has many implications. It definately indicates that anybody, including the State, can be held liable in

damages for damagessustained as the result of a denial of a constitutional right. See Walter A. Dillinger, "Of Rights and Remedies: The Constitution As A sword, 1972, 83 Harvard Law Review 1512-1564.

4 Illinois Law, Shepard's Citator 1971, page 578, in speaking of the Court of Claims, states:

> "There is no provision of the law with respect to appeal from a judgment of this court to any other court, and consequently its judgments are final with respect to appeal to any other court in Illinois, However, it is conceivable that if a constitutional or federal question were presented or adjudicated, a review might be had in the Supreme Court of the United States."

The second constitutional point was raised in the petition for rehearing as Point IV.

It states:

The claimant is entitled to recover damages under the Crime Victims Compensa-

Act, Ch. 70, Illinois Revised Statutes 1975, Sections 71 to 84, inclusive, even though Section 84 states that the Act applies to injuries which are inflicted after the effective date of the Act, because the Act itself is a result of the recognition of the duty to protect and compensate inherent in Claimant's theory of the case, and to recognize it in regard to persons injured after the effective date of the Act and not in regard to her and others injured before that Act, long after her case was filed, is to deny her the protection and equal protection of the laws, there being no reasonable basis in drawing any distinction betwen her and them under such circumstances.

The Court of Claims decided both points against petitioner.

ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

The basic reason why this Court should grant ceryiorari is that it is completely unreasonable and unjust that a loss due to a criminal act committed by anyone, but especially by a criminal who has been released from custody, should be borne by a single individual, when the crime problem is a national and a state problem and should be borne by all persons in a state represented by the government.

Respectfully submitted,

HUGH M. MATCHETT,

Petitioner's Attorney.

APPENDIX

1.

30 Court of Claims of the State Of Illinois (No. 5442—Claim Denied.) Pages 635-639.

CHRISTINA FLAIM, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent. Opinion filed June 11, 1976.

HUGH M. MATCHETT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; ETTA COLE AND EDWARD L. S. ARKEMA, JR., Assistant Attorneys General, for Respondent.

Immunity—doctrine of respondent superior. Since public officials are immune from liability under Illinois law for negligence in the performance of discretionary duties, their principals, the State, is similarly immune under the doctrine of respondent superior.

BURKS, J.

This action, seeking damages for personal injuries sustained by the claimant, is based upon the alleged negligence of respondent's Department of Corrections in approving the parole and release of one Ronald Sledge, a juvenile, who, after his release, attacked, battered, and robbed the claimant; and that respondent knew the said parolee to be a dangerous person.

Claimant also contends that the State of Illinois is, pursuant to the equal protection clauses of the state

and federal constitutions, under a duty to compensate innocent victims of crime "without regard to whether the state was negligent or not." 635/636

The second contention is a theory which has been specifically rejected recently by the Illinois Supreme Court. In Inez Williams v. Medical Center Commission IDocket No. 46562 Supreme Court Opinion filed March 24, 1975I Justice Schaefer analyzed similar constitution-arguments as to the State's liability and said among other things:

> "A constitutional grant of immunity to a soverign has never so far as we are aware, been held to be an arbitrary classification which violates equal protection."
>
> "The recent decision of the Supreme Court of the United States in Edelman v. Jordan (1974), 415 U.S. 651, 39 L. Ed. 2d 662, 94 S. Ct. 1347, indicates clearly, we believe, that the assertion of sovereign immunity by a State is not offensive to any provision of the Constitution of the United States."

Although it was under no legal duty to do so, the State of Illinois has no voluntarily agreed to assume some of the financial loss suffered by innocent victims of crimes by enacting the "Crime Victims Compensation Act" effective October 1, 1973. See 884 of the Act. "This act applies only to injuries inflicted after the effective date of this Act."

We return now to claimant's first and basic contention, i.e., that the Youth Commission of the Department of Corrections was negligent in granting parole to Ronald Sledge who was a dangerous person. Although the alleged negligence was not proved by a preponderance of the evidence in this case, it is plausable to conclude, with the benefit of hindsight, that the officials responsible for paroling Ronald Sledge made an error in judgment.

It is well-established law in Illinois that public officials are immune from liability for performing discretionary functions. The rationale of such immunity was 636/637 best expressed by Judge Learned Hand in Gregoire v. Biddle, 177 F.2d 579, 581, 2nd Cir. 1949:

> "It is thought to be better to leave unredressed those wrongs done by dishonest Ior negligentI officials than to subject those who try honestly to perform their duty to the constant fear of retaliation."

In Lusietto v. Kingman, 107 Ill.App. 239(1969), the court noted (at page 245) that an immunity exists in favor of public officials when they are exercising their official discretion on matters which are discretionary in nature. In Kelly v. Ogilvie, 64 Ill.App.2d 144(1965), this doctrine of quasi judicial immunity was more fully expounded. See also Barr v. Mateo, 360 U.S. 564(1959). This doctrine, well established and of long standing in Illinois, states that, where official action is the result of judgment or discretion, it is judicial and immune from liability. People v. Bartel,

138 Ill. 322; McCormick v. Burt, 95 Ill. 263. As the Court said in Kelly v. Ogilvie (Supra) at page 147

> "This doctrine rests on the principle that the public decision maker, like the judge, ought to be shielded from personal liability or other factors extraneous to a judgment based on his best perception of public needs."

Since public officials are immune from liability under Illinois law for negligence in the performance of discretionary duties, their principal, the State, is similarly immune under the doctrine of respondeat superior.

Moreover, at the time of claimant's injuries, there was in effect a statute specifically exempting a public employee or a local public entity from liability from "any injury resulting from determining to parole or release a prisoner." Ill. Rev.Stat. (1965) Ch. 85 §4-106 effective August 13, 1965:

> "§4—106. Parole--Escaped prisoners Neither a local public entity nor a public employee is liable for:
>
> "(a) Any injury resulting from determining to parole or release a prisoner, to revoke his parole or release, or the terms and conditions of his parole.
>
> "(b) Any injury inflicted by an escaped or escaping prisoner." 637/638

Although the above statute specifically applies to local governmental units, it is a declaration by the General Assembly as to the public policy of this State controlling the

precise issues presented in the case at bar. In determining to parole a prisoner, government officials are performing a discretionary duty or function. Such officials and their governmental unit are excused by law from any liability for any injuries that might result from the exercise of such discretionary power.

It was not necessary for the State to be included in the "Local Governmental and Governmental Employees Tort Immunity Act." The sovereign immunity of the State, except as such immunity is specifically waived by the General Assembly, rests firmly on sound constitutional grounds according to recent decisions of the Illinois Supreme Court in Inez Williams v. Medical Center Commission (Supra) and according to the U.S.Supreme Court in Edelman v. Jordan (Supra) and Krause v. Ohio, U.S.Supreme Court Reports 34 L.Ed. 2d 506. Same case below, 31 Ohio St 2d 132, 60 Ohio Ops2d 100, 285 N.E.2d 736 contains an exhaustive treatise on the subject of a state's sovereign immunity confirmed by the U.S.Supreme Court in 1972.

By contrast, the immunity once claimed by units of local government was judicially abolished in Molitor v. Kaneland Community Unit District No. 302 (1959), 18 Ill.2d 11, Harvey v. Clyde Park District(1964), 32 Ill. 2d 60, and other subsequent opinions.

"Those opinions, however, Iquoting our high court in Inez Williams (Supra) did not involve the sovereign immunity of the State or the validity of the Court of Claims Act, questions which were thoroughly threshed out in the recent constitutional convention. The present language of §4 of Article XIII—'Ex-

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cept as the General Assembly may provide by law, sovereign immunity in this State is abolished'—was adopted only after the defeat of an amendment which would have limited the power of the General Assembly to the provision of a special forum, and would have eliminated its authority to restrict the right of trial by jury and to impose time limitations and limitations upon the amount of recovery. (5 Record of Proceedings, Sixth Illinois Constitutional Convention 3948-3952.)"

The State's liability is no greater, and its immunity is certainly no less, under existing law, than that of local governmental units which are creatures of the State. To hold the State liable for any errors in judgment by its officials, in the exercise of their discretionary decision making powers and duties, would be contrary to the public policy established by the General Assembly. This is particularly true of a decision to parole or release a prisoner, "one of the most difficult, sensative and complicated decisions that must be made in the criminal justice system.""Parole Decisions" Ill.Bar Journal, Sept. 1973, p. 20.

For the reasons stated herein, this claim must be and is hereby denied.

2.

Order Of The Court of Claims Of The State of Illinois Entered May 15th, 1978, Denying The Petition For Rehearing, In Case No. 5442.

This cause comes to be heard on the petition for rehearing filed by claimant seek-

ing rehearing from the decision of this Court of June 11, 1975, due notice being given and the respondent having filed an answer to the claimant's petition for rehearing, and the Court being fully advised, hereby

FINDS that the petition for rehearing filed by claimant does not state with any merit any alleged errors overlooked by the Court. Pursuant to Rule 22 of this Court there is no legal or factual reason to reverse or modify this Court's opinion of June 11, 1975 denying the claim. Therefore.

IT IS ORDERED:

That the petition for rehearing filed by claimant be, and the same is hereby denied with prejudice.

ENTER: s/ LEO F. POCH
Judge

Concurring:
s/
Harry W. Polos
s/ C.J.
S.J. Holderman,
J.